

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION**

DWIGHT RODGERS,)
)
Plaintiff,) CIVIL ACTION NO.:
) 2:06-CV-1067-WKW-SRW
)
v.)
)
CRACKER BARREL OLD)
COUNTRY STORE, INC.,)
)
Defendant.)

**PLAINTIFF'S RESPONSE TO DEFENDANT'S MOTION
FOR SUMMARY JUDGMENT**

COMES NOW Plaintiff, Dwight Rodgers, and pursuant to Fed. R. Civ. P. 56 (b) and hereby moves this Court to dismiss Defendant's Motion for Summary Judgment as to all claims asserted by Plaintiff. Plaintiff shows this Court that there are genuine issues of material fact, and that the Plaintiff is entitled to Summary Judgment as a matter of law on all claims asserted in the Complaint.

Plaintiff can prove a prima facie case of disparate treatment related to his termination because he was qualified for the job and other Caucasian store managers were treated more favorably. Plaintiff can make out a prima facie case of disparate treatment because he was qualified for the job and the adverse action taken against him was that he was fired for reporting an incident of discrimination

directed at him, and other Caucasian managers were treated more favorably by not being continually reprimanded and then terminated after filing his complaint.

Defendant's actions against Plaintiff were pretextual in that he was targeted for termination, because of his race. Plaintiff opposed an racially derogatory statement which was unlawful conduct. Plaintiff was retaliated against, when he demonstrated that he received a favorable evaluation, was promoted to General Manager and then targeted after filing on behalf of a employee. Plaintiff was subject to the continued harassing disciplinary actions. Defendant did not acquire evidence after the fact to support limiting Plaintiff's damages.

In support of its response and in addition to the pleadings, Plaintiff submits Plaintiff's Statement of Undisputed Material Facts and Plaintiff's Response to Defendant's Statement of Undisputed Facts; Plaintiff's Brief in Opposition to Defendant's Motion for Summary Judgment; Plaintiff's Exhibits in Support of his Response to Defendant's Motion for Summary Judgment, evidentiary materials including deposition excerpts, affidavits and declarations of other witnesses and exhibits.

Accordingly, Plaintiff respectfully requests that Defendant's request for Summary Judgment be DENIED.

Respectfully submitted this 27th day of August, 2007.

Respectfully submitted,

/s/Byron Perkins
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CERTIFICATE OF SERVICE

I hereby certify that on August 27, 2007, I placed in US mail

PLAINTIFF'S RESPONSE TO DEFENDANT'S MOTION FOR SUMMARY

JUDGMENT to the following attorneys of record and electronically filed same using the CM/ECF system on August 31, 2007:

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Respectfully submitted,

/s/Byron Perkins

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